Remarks

Claims 1-7, 9-12, 14-16, and 18-40 are pending.

Claim 8, 13, and 17 are cancelled.

Claims 1-7, 9-12, 14-16, and 18-40 are rejected.

Claim Amendments

Claims 1, 6, 12, 16, 18, 22, 25, 26, 32, 35, and 39 have been amended. Support for the amendments may be found in the application as filed, for example, on pages 5-7. No new matter has been added.

Claim Rejections 35 USC 102(e)

Claims 1-5, 7, 9-11, 14-15, 18-31 and 40 are rejected under 35 USC 102(e) as being anticipated by Seidman et al. (US 6,298,482).

Claim 1 as amended includes a module operable to detect services available information, the services available information indicating an availability of services at the network termination unit, and to transmit the services available information in the use pattern packets. Claim 22 includes similar elements.

First, the Examiner does not appear to be distinguishing use patterns from services available information. Claim 1 includes a module operable to detect use patterns and detect services available information. The services available information indicates an availability of services at the network termination unit. In Seidman, viewer response monitoring keeps track of viewer selection information. *Seidman, col. 3, ll. 39-41.* The STB relays the selection to the head end. *Seidman, col. 5, ll. 54-55.* Reports containing subscriber selection history information

can be used by the head end. *Seidman, col. 6, ll. 53-54.* Thus, what is detected is a user's interaction with the STB to make a selection.

The event of a user making a selection does not mean that a service associated with the selection was available. For example, a user may select a premium channel that the user does not subscribe to. Thus, the user made a selection of a service that is not available to the user. As a result, Seidman does not teach a module operable to detect services available information.

Furthermore, Seidman does not teach a module operable to transmit the services available information in the use pattern packets. In Seidman, the user is notified of the availability of viewing options through a program menu. *Seidman, col. 6, ll. 66-67.* Even if the notification implies that there is a module operable to detect services available information, such information is not transmitted in a use pattern packet. For example, a report sent to a head end by an STB may include a summary of viewing activity, or a detailed description of viewing behavior. *Seidman, col. 6, ll. 44-49.* Thus, viewing aetivity, viewing behavior, or the selections of the user, not the availability of services at a network termination unit, is transmitted to the head end.

Thus, Seidman does not teach each and every element of claim 1 or 22. The Applicant requests that the Examiner withdraw the rejection of claims 1 and 22, and dependent claims 2-7, 23-25, and 36-40.

With respect to claims 9 and 26, directed towards a content analyzer, the Examiner appears to be rejecting these claims by arguing that the claims have the same structural elements of claim 1. However, "a functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used." *MPEP 2173.05(g).* Thus, even if claim 1 has the same structural elements as claim 9, functional limitations of the claims must be evaluated and

considered. For example, the elements of claims 1 and 9 are different through functional limitations. Claim 1 includes a module operable to transmit the use patterns as use pattern packets. In contrast, claim 9 includes a processor operable to analyze the data to derive viewing information, where the data was decoded from a use pattern packet. Thus, even if the module of claim 1 and the processor of claim 9 are interpreted as the same structural element, each has distinct functional limitations that are lacking in the other. Therefore, it is improper to reject claim 9 based solely on the structural elements of claim 1.

In addition, claim 9 includes a port operable to receive use pattern packets, or a decoder to decode the use pattern packets. Claim 26 includes a similar means for receiving use pattern packets. There is no indication in Seidman that an STB, which the Examiner cited as a network termination unit, receives or decodes use pattern packets. Thus, the STB does not include the port and the deeoder of elaim 9. As a result, the STB alone cannot be the content analyzer of claim 9 or 26.

Furthermore, claim 9 includes a processor operable to monitor services available information, the services available information indicating an availability of services at the network termination unit. Claim 26 includes similar processing means. Although the head end of Seidman may gather statistics on viewing selections, a processor in the head end is not described as monitoring services available information indicating an availability of services at the network termination unit. As a result, the head end of Seidman alone cannot be the content analyzer of claim 9 or 26.

In addition, even if the head end and STB of Seidman together are interpreted as a content analyzer, nothing teaches or suggests that there is a processor or processing means operable to both analyze data from use pattern packets and monitor services available

information. The STB and head end are not described as having a common processor. Therefore, even assuming that the STB may monitor services available information and the head end analyzes data from use pattern packets, there is no processor taught in Seidman that performs both. As a result Seidman does not teach each and every element of claims 9, 26, and dependent claims 10, 11, 14, and 27-29.

Furthermore, even if the STB and head end of Seidman are interpreted as the processor or processing means of claims 9 or 26, claims 10, 11, 27, and 28 further limit the content analyzer to residing in a distribution hub or a head end. Thus, if the content analyzer includes the STB, then the content analyzer does not reside at the distribution hub or head end. As a result, Seidman does not teach each and every element of claims 10, 11, 27, and 28.

In addition, claim 26 includes a processing means operable to characterize the network termination unit by the viewing information and the services available information. Thus, the content analyzer characterizes a network termination unit using services available information from the network termination unit.

As described above, Seidman does not teach a content analyzer operable to monitoring services available information from a network termination unit. However, even if it did, Seidman still does not teach a processing means operable to characterize the network termination unit according to the services available information. As a result, Seidman does not teach each and every element of claim 26, and dependent claims 27-29.

Claim 15 includes setting a network packet header to identify the payload of a network packet as use patterns, forming a use pattern packet. Claim 30 includes a similar element. Even if Seidman teaches sending viewer selections that are interpreted as use patterns, no mention is made of a setting of a network packet header to identify the payload as use patterns.

Thus, in order for Seidman to teach a header of a network packet, it must be inherent in Seidman. However, "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." *MPEP 2112 IV.* It is not necessary to the teachings in Seidman that the network packet header identifies the payload as use patterns. For example, although also not taught in Seidman, the payload itself may include identification that the payload includes use patterns. As a result, Seidman does not teach each and every element of claims 15 and 30 and dependent claims 18-21, and 31.

Claim 18 includes tracking video content delivery. Claims 25 and 31 include similar elements. Although Seidman describes tracking a user's viewing history, viewing history as used in Seidman and video content delivery are distinct. As described above, tracking of viewing history in Seidman is described only by monitoring a user's selections. Thus, what is tracked is a user's interaction with the STB to make a selection. Nothing is mentioned concerning the delivery of video content to the user. Although content is delivered to a user in Seidman, and the content may be customized using a user's viewing history, tracking that a user made a selection does not mean that the delivery of the content was tracked. As a result, Seidman does not teach each and every element of claims 18, 25, and 31.

Furthermore, claim 18 specifically recites tracking video content delivery to the viewing device. The selection of a user has no bearing on the delivery of the video content to the viewing device. That a user selected video content does not even mean that the video content was delivered. For example, a user may select video content, then the viewing device may receive the video content. Alternatively, the video content may be already delivered to and stored on the

viewing device before the user selects it. As a result, Seidman does not teach each and every element of claim 18.

Claim Rejections 35 USC 103(a)

Claims 6, 12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seidman et al. as applied to claims 1, 10 and 15 and in view of Zintel (US 6,779,004).

Claims 6 recites that the use pattern packets are identified as such using a content discovery protocol that uniquely identifies use pattern packets from among other packets. Claims 12 and 16 include similar elements. The Examiner noted that Seidman did not teach that the use pattern packets are identified as such using a content discovery protocol. Zintel does teach a Simple Service Discovery Protocol (SSDP), however, the SSDP provides a peer discovery mechanism for the UPnP devices. *Zintel, col. 46, ll. 33-46.* The discovery proeess returns only basic information needed to connect with an embedded computing device. *Zintel, col. 47, ll. 16-17.* Nothing is mentioned for uniquely identifying use pattern packets from among other packets. As a result, the combination of Seidman and Zintel does not teach or suggest each and every element of claims 6, 12, and 16. The Applicant requests that the Examiner withdraw the rejection of claims 6, 12, and 16.

Claims 32-39 are rejected under 35 USC 103(a) as being unpatentable over Seidman et al as applied to claims 1 and 9 and in view of Teich (US 6,088,826).

Claim 32 includes a processor operable to track a quality of service of services provided to thc network termination unit. Teich does teach communicating from a destination to a source system to switch the rigorousness of error detection and correction. *Teich, col. 5, ll. 41-44.* However, even if this is interpreted as a quality of service, there is no teaching or suggestion to

track such a communication or switch in error correction. Thus, the combination of Seidman and Teich does not teach or suggest each and every element of claim 32.

Claim 38 includes a module operable to determine if data of a monitored content signal that should have been received at a point in time was received. Claim 34 includes a similar element within a content analyzer. Teich operates on packets or frames individually. *Teich, col. 4, ll. 17-22, and FIG. 1.* It does not disclose any relationship between packets or frames. In addition, Seidman does not disclose any relationship of packets that should have been received by a point in time. Merely checking a received packet for errors, optionally correcting errors, and optionally requesting retransmission of an errored packet does not teach or imply any time relationship to other packets. As a result, there is no monitoring, tracking, or otherwise determining if data that should have been received was received. Therefore, the combination of Seidman and Teich does not teach or suggest eaeh and every element of claims 34 or 38.

Claim 39 includes a module operable to verify a complete delivery of an advertisement. Claim 35 includes a similar element implemented in a content analyzer. As described above, there is no relationship between packets and frames suggested in Seidman and Teich. Since an advertisement will likely include more than one frame or packet, the laek of a relationship shows that the combination of Teich and Seidman does not teach or suggest verifying a complete delivery of an advertisement.

However, even if an advertisement includes only one packet or frame, combination of Teich and Seidman does not suggest verifying that it is eomplete. There is no suggestion of any indication that a single packet or a single frame was a complete advertisement in order to verify that it was. As a result, the combination of Teich and Seidman does not teach or suggest each and every element of claims 35 and 39.

Conclusion

For the foregoing reasons, reconsideration and allowance of claims 1-7, 9-12, 14-16, and 18-40 of the application as amended is solicited. The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

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Respectfully submitted,

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